




MEMORANDUM

TO: Mayor and City Council Members

FROM: Veronica Briseño Lara, Director, Small and Minority Business Resources Department (SMBR) 

DATE: February 9, 2015

SUBJECT: MBE/WBE Procurement Program Overview

In reference to questions raised at the City Council Work Session on January 27, 2015, regarding City of Austin Procurement items and the Minority-Owned and Women-Owned Business Enterprise (MBE/WBE) Procurement Program, I wanted to provide an overview of the program and its role in procurement.

The mission of the Small and Minority Business Resources (SMBR) Department is to provide development opportunities and resources for small minority and women-owned businesses so that they can have affirmative access to city procurement opportunities and show productive growth. Historically, the MBE/WBE Procurement Program has been an integral part of the City of Austin's procurement policy. In Fiscal Year 2014, Prime Consultants/Contractors met or exceeded the goals on 84% of the contracts awarded by City Council that were solicited with MBE/WBE goals, and in the same Fiscal Year, \$63,639,245 was expended on MBE firms and \$26,926,861 was expended on WBE firms, a testament to the importance of the Program.

The MBE/WBE Procurement Program was established by an Ordinance passed in 1987. In 1989, in *City of Richmond v. J.A. Croson Co.*, the U.S. Supreme Court held that a local government may establish a race- and gender-based procurement program if (1) it can demonstrate there is a disparity for the identified minority groups, and (2) the program is narrowly tailored to address the disparity. As a result, the City has conducted periodic studies to identify the disparity and provide the basis for the City's MBE/WBE program. The current ordinances (Chapters 2-9A Construction, 2-9B Professional Services, 2-9C Nonprofessional Services and 2-9D Commodities of the City Code) are the result of these studies and provide the governance for the current MBE/WBE Program. The most recent study was conducted in 2008, and the City is currently under contract with National Economic Research Associates (NERA) to commission a new disparity study that will be completed this summer.

Goal Determination

SMBR is responsible for implementing the MBE/WBE Program established by the Ordinances and reviews all City solicitations over the City Manager's administrative spending authority (currently \$58,000) for MBE/WBE participation opportunities. On these solicitations, SMBR makes the determination if goals should be set and what the goals should be.

When establishing goals, SMBR considers numerous factors, including the availability of MBE/WBE firms, and the subcontracting opportunities on the solicitation. Specifically, the Ordinances legislate how goals are set in this section:

City Code of Ordinances 2-9A-19, 2-9B-19, 2-9C-19 and 2-9D-19:

(A) The city council recognizes that the availability of MBEs and WBEs is not uniformly present across all areas of Contracting. Therefore, the Director¹, where appropriate, and pursuant to criteria established by rule, may establish project participation Goals and/or Subgoals for individual Contracts, based on:

- (1) normal industry practice with respect to Construction, as determined in consultation with the User Department;
- (2) the availability of at least three certified MBEs or WBEs to perform the functions of those individual Contracts;
- (3) the City's utilization of MBEs and WBEs to date, so as to achieve the Annual Participation Goals and Subgoals, if any; and
- (4) any additional relevant factors.

Additionally, Section 7 of the Minority-Owned and Women-Owned Business Enterprise Procurement Program Rules speaks to goal-setting:

Section 7: Goals for MBE and WBE Participation

- (7.1) MBE and WBE subcontracting goals for a solicitation shall be based on the dollar value of the solicitation; the type and scopes of work of the solicitation; the availability of MBEs and WBEs to perform the scopes of work anticipated in the solicitation; and the City's progress toward achieving annual participation goals and sub-goals in the fiscal year in which the solicitation will be awarded.

¹ City Code 2-9A-4, 2-9B-4, 2-9C-4, and 2-9D-4- (20) DIRECTOR. The City official who heads the department which manages the Program authorized by this chapter, and the Director's successor, and the successor agency or department

- (7.2) Goals may be set if there are at least three certified MBEs or three certified WBEs currently available to provide the commodities or services identified in the solicitation.
- (7.3) In certain circumstances, the Department may elect not to set goals for a solicitation. The Department may elect not to set goals when there is insufficient availability of MBEs or WBEs to provide the commodities or services identified in the solicitation, or when there are insufficient subcontracting opportunities, or when it is in the best interest of the City to do so.

Based on the governance of the Program Ordinances and Rules, goals for MBE and WBE participation differ from contract to contract, based on the type of scope, the availability of MBEs and WBEs to perform the requirements of the contract, and other factors. The department works closely with the procurement agent to review the details of the solicitation so that SMBR can make a goal determination.

SMBR may set one of two kinds of goals on solicitations – Annual Goals or Project Specific Goals. Annual goals are the goals stated in the MBE/WBE Procurement Ordinances and can be updated upon the completion of future Disparity Studies. These goals are established by procurement type (construction, professional, non-professional and commodities) and by ethnic group and gender. Minority goals may be either an aggregate MBE goal that includes all ethnic groups or race-specific goals, in addition to the WBE goal.

The current goals in the Ordinances are:

Ownership	Construction	Professional	Non-Professional	Commodities
African American	1.7%	1.9%	2.5%	0.3%
Hispanic	9.7%	9.0%	9.9%	2.5%
Asian American / Native American	2.3%	4.9%	1.7%	0.7%
Minority	13.7%	15.8%	14.1%	3.5%
Women	13.8 %	15.8%	15.0%	6.2%

Attached is a *Goal Calculation Overview* document that further details how project-specific goals are set.

In certain circumstances, SMBR does not set goals on solicitations. Contracts that do not have at least three MBEs or WBEs certified for the scopes of work identified on the contract, or do not have at least two subcontracting opportunities available, might not have goals set. If goals are not set on a contract, respondents must complete a "No Goals Utilization Form" which states the respondent will contact SMBR and solicit MBEs/WBEs when they identify subcontracting opportunities. Failure to complete this form results in the respondent being deemed "Non-Compliant." Non-Compliant bidders/proposers are not considered for award of the contract.

Compliance and Good Faith Efforts

It is important to note that goals set on projects are not a quota, but an aspirational goal, in accordance with the U.S. Supreme Court's decision in City of Richmond v. J.A. Croson Co. A respondent is either compliant with a City of Austin solicitation by either meeting the goals or achieving Good Faith Efforts.

When goals are set on a solicitation, respondents submit a *Compliance Plan* as a part of their response that details how they will either meet the identified goals or provide Good Faith Efforts that detail their efforts to meet the goals.

Good Faith Efforts include at a minimum:

- (1) Soliciting through at least two reasonable, available, and verifiable means MBEs/WBEs within the Significant Local Business Presence (SLBP) who have the capability to perform the Contract work. The Bidder must solicit this interest within sufficient time to allow the MBEs/WBEs to respond to the Solicitation. The Bidder/Proposer must take appropriate steps to follow up initial Solicitations with interested MBEs/WBEs. The Bidder/Proposer must state a specific and verifiable reason for not contacting each certified Firm with a Significant Local Business Presence.
- (2) Providing interested MBEs/WBEs with adequate information about the plans, specifications, and requirements of the Contract, including addenda, in a timely manner to assist them in responding to a Solicitation.
- (3) (a) Negotiating in good faith with interested MBEs/WBEs that have submitted Bids to the Bidder/Proposer. A MBE/WBE that has submitted a Bid to a Bidder/Proposer but has not been contacted within five business days of submission of the Bid may contact SMBR to request a meeting with the Bidder/Proposer.

(b) That there may be some additional costs involved in soliciting and using MBEs and WBEs is not a sufficient reason for a Bidder/Proposer's failure to meet the Goals and Subgoals, as long as such costs are reasonable.

- (4) Publishing notice in a local publication such as a newspaper, trade association publication, or via electronic/social media.
- (5) Not rejecting MBEs/WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
- (6) Making economically feasible portions of the work available to MBE/WBE Subcontractors and suppliers and to select those portions of the work or material needs consistent with the available MBE/WBE Subcontractors and suppliers, so as to facilitate meeting the Goals or Subgoals.
- (7) The ability or desire of a Bidder/Proposer to perform the work of a Contract with its own organization does not relieve the Bidder/Proposer of the responsibility to make Good Faith Efforts. A Bidder/Proposer who desires to self-perform the work of a Contract must demonstrate Good Faith Efforts unless the Goals or Subgoals have been met.
- (8) Bidders/Proposers are not required to accept higher quotes in order to meet the Goals or Subgoals.
- (9) Effectively using the services of Minority Person/Women community organizations; Minority Person/Women Contractors groups; local, state, and federal Minority Person/Women business assistance offices; and other organizations to provide assistance in solicitation and utilization of MBEs, WBEs and/or DBEs.

The following factors may also be considered by SMBR in determining that a Bidder/ Proposer has made Good Faith Efforts. These factors are not intended to be a mandatory checklist, nor are they intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases:

- (1) Making efforts to assist interested MBEs/WBEs in obtaining bonding, lines of credit, or insurance as required by the City or Contractor.
- (2) Making efforts to assist interested MBEs/WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

SMBR reviews the *Compliance Plan* and deems the respondent "Compliant" or "Non-Compliant." If a respondent is deemed Non-Compliant, they are not considered for award of the contract.

Compliance Plan Monitoring Post Council Award

Once a contract is awarded by City Council, SMBR continues to have a role by monitoring the awardee's compliance. The Compliance Plan becomes a part of their contract with the City, and SMBR is charged with ensuring they adhere to the Compliance Plan. SMBR staff monitors expenditures on the contracts to all MBEs/WBEs monthly and attends project progress meetings to ensure the Prime Consultant/Contractor is adhering to the Compliance Plan. If there are any changes to the Compliance Plan, the Prime Consultant/Contractor must go through the Request for Change process to receive approval from SMBR to make the change. Any changes without SMBR's approval may result in a violation issued to the Prime Consultant/Contractor and possible sanction(s) administered by the Purchasing Office. Additionally, if any issues arise during the life of the contract, SMBR will meet with the contractor/consultant and the MBE/WBE to attempt to resolve the issue.

Additional information about the MBE/WBE Program and SMBR is located on the department website (<http://www.austintexas.gov/department/small-and-minority-business/about>). A document that provides an overview to all of SMBR's services is also attached for your reference.

If you would like to schedule a meeting to learn more about our program or if we can answer any questions, please do not hesitate to contact me at (512) 974-2156.

cc: Marc A. Ott, City Manager

Ray Baray, Chief of Staff

Elaine Hart, Chief Financial Officer

Greg Canally, Deputy Chief Financial Officer

Rosie Truelove, Director, Contract Management Department

James Scarboro, Purchasing Officer

Attachments (2)



Mission: The purpose of the Small and Minority Business Resources Department is to administer the Minority-Owned Business Enterprise/Women-Owned Business Enterprise (MBE/WBE) Procurement Program and provide development opportunities and resources for small businesses so that they can have affirmative access to city procurement opportunities and show productive growth.

Procurement Areas: Construction, Professional Services, Non-professional Services, and Commodities

Divisions of SMBR: Certification, Compliance, and Resource Services

The Certification division verifies that the Minority, Women and/or Disadvantaged Owned Business Enterprise applicant owns, manages, and controls the day-to-day operations of the business. By reviewing completed applications and performing site audits, the division ensures that a business owner meets the qualifications of the MBE/WBE and DBE Procurement Programs.

Certification Types Available: Minority-Owned Business Enterprise (MBE); Women-Owned Business Enterprise (WBE), and Disadvantaged-Owned Business Enterprise (DBE).

SMBR also has a Memorandum of Agreement (MOA) with the State of Texas which allows SMBR to recommend qualified applicants for Historically Underutilized Business (HUB) Certification.

What is a MBE? A Minority-Owned Business Enterprise (MBE) is a certified business owned by a socially and economically disadvantaged minority person. Minority persons include: African-Americans, Asian-Americans, Hispanics, or Native Americans.

What is a WBE? A Women-Owned Business Enterprise (WBE) is a certified business owned by socially and economically disadvantaged women.

Dual Certification: Minority women business owners may be dually certified as a MBE and as a WBE; however, participation would only count in one category on a contract.

What is a DBE? A Disadvantaged-Owned Business Enterprise (DBE) is a certified business owned by a socially and economically disadvantaged person.

MBE/WBE Payments: (Source austintexas.gov/purchasing)

- **Minority-Owned Business Enterprise (MBE) Payments**
 - FY 2014 - \$63,639,245
- **Women-Owned Business Enterprise (WBE) Payments**
 - FY 2014 - \$26,926,861

The **Compliance** division is responsible for reviewing, monitoring and tracking MBE/WBE participation on City procurements through all phases of a project. At Pre-Award, the Compliance team reviews solicitations, sets project goals, collaborates with Project Managers to help identify scopes of work on projects, and verifies Compliance Plan information submitted by Bidders/Proposers. At Post-Award, the Compliance team monitors and assesses compliance by conducting site audits, reviewing payment requests, facilitating performance/payment issues, and determining final compliance with the program.

Annual Participation Goals for The Program				
Group	Construction	Commodities	Professional Services	Nonprofessional Services
African-American	1.7%	0.3%	1.9%	2.5%
Hispanic	9.7%	2.5%	9.0%	9.9%
Native/Asian American	2.3%	0.7%	4.9%	1.7%
MBE	13.7%	3.5%	15.8%	14.1%
WBE	13.8%	6.2%	15.8%	15.0%

The **Resource Services** division provides information and assistance to the minority business community.

- SMBR's Plan Room provides free electronic access to the McGraw-Hill Dodge system of drawings and construction specifications for projects in 100 counties in south and central Texas. The Plan Room also has hard copy plans and specifications from local, private, and public sector jobs that can be viewed onsite or copied for a minimal fee.
- Outreach facilitates departmental communications regarding services, key initiatives, special notices; and hosts monthly workshops on topics of interest to the minority business community. Past workshop titles include: Certification 101, Meet the Prime, IT Opportunities, Big Projects with Opportunities. SMBR collaborates with local trade associations including Asian Contractors Association, Austin Area Black Contractors Association, US Hispanic Contractors Association and other community organizations to increase awareness of our program and other available resources.
- In order to help our vendors overcome the challenges that can be associated with bonding, SMBR has a Bonding Financial Consultant on staff. The Bonding Consultant meets one-on-one with business owners to educate and assist them with their bonding needs.

Awards Received:

- ***Diversity Champion***, Travis County Historically Underutilized Program (HUB), May 2009
- ***Regional Minority Business Advocate of the Year***, U.S. Department of Commerce – Minority Business Development Agency (MBDA), August 2009
- ***Government Partner of the Year***, Greater Austin Hispanic Chamber of Commerce, March 2010

Goals Calculation Overview

The City of Austin's Small and Minority Business Resources Department (SMBR) manages Minority-Owned and Women-Owned Business Enterprise (M/WBE) participation goals on City contracts. A "goal" is the percentage of a contract's projected expenditure that the City would expect certified MBE and WBE firms to receive in the absence of discrimination. The Department determines whether a City contract will have no goals, utilize standard "annual" goals, or utilize project-specific goals. This overview provides a simplified view of how annual goals and project-specific goals are set. An example follows on the attached page.

Calculating Annual Goals

Step 1: Calculate the number of available MBE and WBE enterprises. Legal guidelines require that minority-related contracting goals correlate with the level of minority contractors in the City's marketplace. The City commissions a marketplace assessment every few years to ensure it has up-to-date contractor availability information. The study counts the number of companies in the marketplace and assesses overall minority availability.

Step 2: Weight the availability. Availability is then weighted to reflect City spending. Industries receiving relatively more dollars in the past few years receive relatively more weight in the estimation of M/WBE availability.

Calculating Project-Specific Goals

Step 1: Identifying firms and their work. SMBR certifies firms to participate in the City's Program; these are "certified firms". Every firm wishing to do business with the City, however – certified and non-certified – uses the Vendor Self Service (VSS) System to identify the Commodity Codes it can perform. Every day, the number of certified firms and firms' Codes change.

Step 2: A Project Manager initiates the Solicitation. A Project Manager first inputs a Solicitation request and proposed Trade Summary into the City's contract software, eCAPRIS. A Trade Summary reflects the Commodity Codes that make up the project and the Project Manager's estimates of the percentage each Code makes up of the project's total price. eCAPRIS (the City of Austin Project Reporting and Information System) informs City staff including SMBR that a Solicitation is about to go out.

Step 3: SMBR assesses whether a contract will have goals. At SMBR, staff reviews the Solicitation request and determines whether the project will have no goals, utilize annual goals, or utilize project-specific goals. SMBR assigns no goals when there are no subcontracting opportunities, or when there is insufficient MBE and WBE firm availability (less than 3). SMBR assigns annual goals when subcontracting opportunities are present but unclear. This is the end of the goals calculation for no-goals and annual goals determinations.

Step 4: A Project Manager finalizes the Trade Summary.

Step 5: eCAPRI calculates project-specific goals. eCAPRIS generates project-specific goals for the Commodity Codes in the Trade Summary. eCAPRIS calculates the project-specific goals using the following formula:

$$\frac{\text{Number of (e.g., AA) Vendors Total for the Commodity Code} * \text{Commodity Code's Trade Summary \%age}}{\text{Number of Vendors Total for that Commodity Code}}$$

Step 6: SMBR reviews and confirms project-specific goals. This final goals assessment becomes part of the Solicitation.

Final Step 7: Bidder submits Compliance Plan. The final step is the Bidder's Compliance Plan. As a Bidder reviews a City Solicitation and its goals, the Bidder completes a Compliance Plan as part of their bid, showing which firms it will subcontract with if awarded the contract, whether the percentage of the total project costs MBE and WBE firms will earn achieves the project's goals, and a showing of Good Faith Effort if the percentage MBE and WBE firms will receive does *not* meet the project's goals. If the bidder does not meet the goals or demonstrate Good Faith Efforts, the bidder is deemed "non-compliant" and is not eligible for award unless a waiver is granted. This requirement to either meet the goals or show Good Faith Efforts to meet the goals is monitored through the life of the contract.

Goals Calculation Overview

Example: Annual Goals

Assume the marketplace assessment finds there are only ten Construction firms in Austin, and they do three types of work: plumbing, topsoil, and framing:

- | | |
|--|---------------------------------|
| 1. Plumbing AA (African American firm) | 6. Topsoil B (Anglo Male firm) |
| 2. Plumbing B (Anglo Male firm) | 7. Topsoil C (Anglo Male firm) |
| 3. Plumbing C (Anglo Male firm) | 8. Framing A (Anglo Male firm) |
| 4. Plumbing D (Anglo Male firm) | 9. Framing B (Anglo Male firm) |
| 5. Topsoil AA (African American firm) | 10. Framing C (Anglo Male firm) |

Based on this marketplace assessment, Construction contractor availability generally and African American Construction contractor availability specifically is:

Number of Vendors Total: 10

Number of African American Vendors: 2

African American Construction Availability: **20%** (2 of 10)

Also assume the assessment identified that **50%** of City expenditures are on Construction. To weight African American Construction availability, multiply African American Construction availability by City spending:

$$20\% \times 50\% = 10\%$$

The weighted African American Construction Availability is **10%**.

In other words, if the City spends \$100, spending patterns tell us \$50 will be spent on Construction. If the City spends \$50 on Construction, and African Americans are **20%** of the City's Construction firms, then African Americans statistically would earn 20% of the City's \$50.00 Construction expenditure, or \$10.00.

Example: Project-Specific Goals

Assume all four plumbing companies identified by the study log on to the City's vendor registration system and are the only companies that state they are available to do work under Commodity Code 12345 Plumbing Pipes. There are now four vendors total available to do work on Commodity Code 12345, one of which is a certified African American vendor. All three topsoil companies log in to VSS and identify Code 45601 (one certified), and all three framing companies log in and identify Code 78901 (none are certified).

Next, assume a Project Manager determines a new project encompasses three scopes of work – plumbing, topsoil, and framing, and that 40% of the project's expenses will be plumbing, 9% of the project's expense will be topsoil, and 51% of the project's expenses will be framing. This is the Trade Summary.

12345 Plumbing Pipes	40%	45601 Topsoil and Dirt	9%
78901 Framing Prep	51%		

As mentioned above, the project-specific goal formula is:

$$\frac{\text{Number of (e.g., AA) Vendors Total for the Commodity Code}}{\text{Number of Vendors Total for that Commodity Code}} \times \text{Commodity Code's Trade Summary \%age}$$

eCAPRIS takes the projected scopes of work in the Trade Summary and information from the vendor registration system, and plugs them into the project-specific goal formula.

- For purposes of this project, the African American plumbing goal would be run as follows: $\frac{1}{4} \times 40\% = 10\%$
- For purposes of this project, the African American topsoil goal would be run as follows: $\frac{1}{3} \times 9\% = 3\%$
- For purposes of this project, the African American framing goal would be run as follows: $\frac{0}{3} \times 51\% = 0\%$

Although overall weighted African American construction availability is 10%, the African American availability assessment (and hence the overall African American goal) for this specific project is 13% (10% + 3% + 0%).